UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD ATLANTA BRANCH OFFICE DIVISION OF JUDGES

DOMSEY TRADING CORPORATION, DOMSEY
FIBER CORPORATION AND DOMSEY INTERNATIONAL
SALES CORPORATION, A SINGLE EMPLOYER

and	Case Nos.	29-CA-14548
		29-CA-14619
INTERNATIONAL LADIES' GARMENT		29-CA-14681
WORKERS' UNION, AFL-CIO		29-CA-14735
		29-CA-14845
LOCAL 99, INTERNATIONAL LADIES'		29-CA-14853
GARMENT WORKERS' UNION, AFL-CIO		29-CA-14896
		29-CA-14983
		29-CA-15012
		29-CA-15119
		29-CA-15124
		29-CA-15137
		29-CA-15147
		29-CA-15323
Aggie Kapelman, Esq. & Kathy Drew King, Esq.		29-CA-15324
for General Counsel.		29-CA-15325
Paul A. Friedman, Esq., for Respondent.		29-CA-15332
Richard M. Greenspan, Esq., for Charging Party.		29-CA-15393
		29-CA-15413
		29-CA-15447
		29-CA-15685

SECOND SUPPLEMENTAL DECISION

Statement of the Case

MICHAEL A. MARCIONESE, Administrative Law Judge. The Board issued its Supplemental Decision and Order in this compliance case on September 30, 2007. *Domsey Trading Corp.*, 351 NLRB No. 33. The decision addressed the back pay claims of 202 discriminatees found to have been entitled to a remedy under the Board's decision in *Domsey Trading Corp.*, 310 NLRB 777 (1993), enfd. 16 F.3d 517 (2d Cir. 1994). The Board resolved the backpay claims of 31 discriminatees and remanded the remainder of the case for further determination of a number of factual issues. The claims of all but 7 discriminatees were remanded to the Board's Regional Office to recalculate backpay based on the Board's determination that the strike benefits they received should be treated as interim earnings and based on additional findings regarding individual discriminatee's mitigation efforts or interim earnings. On February 21, 2008, The General Counsel filed directly with the Board a *Motion for*

Summary Acceptance of Region 29 Recalculations of Backpay Pursuant to Board Remand and Issuance of a Second Supplemental Decision and Order. To date, the Board has not ruled on the motion. The backpay claims of the remaining seven discriminatees were remanded to the undersigned. This decision addresses only those issues remanded to me.

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Unauthorized Aliens

The Board remanded authorization status issues regarding six discriminatees under the Supreme Court's decision in *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002), which was decided after I issued my supplemental decision on October 4, 1999. The discriminatees whose status is at issue are:

Atulie Balan
Bardinal Brice
Michelet Exavier

Marie Jose Francois Rene Geronimo Rose Marie Ste. Juste²

In remanding this portion of the case, the Board directed that the undersigned administrative law judge "develop a complete factual record consistent with this supplemental decision and to issue a second supplemental decision setting out his factual findings based on that record. After the parties have had the opportunity to file exceptions if they so desire, the Board will issue a Second Supplemental Decision resolving the legal issues based on the judge's Findings of Fact."

On May 21, 2008, the General Counsel filed a motion to withdraw the back pay claims for Exavier and Ste. Juste based on the results of the Region's investigation. General Counsel moved further that the claim for Geronimo be included with those of other missing discriminatees and placed in escrow in accordance with the Board's holding in *Starlite Cutting I*, 280 NLRB 1071 (1986), as clarified in *Starlite Cutting II*, 284 NLRB 620 (1987).³ In response to my Order to Show Cause why General Counsel's motion should not be granted, counsel for the Respondent submitted a letter dated June 11, 2008 objecting to the request to place Geronimo's backpay in escrow. Respondent did not object to the withdrawal of the claims for Exavier and Ste. Juste.⁴

Geronimo testified at the compliance hearing on May 15, 1998. When General Counsel attempted to contact him after the Board issued its Supplemental Decision on September 30, 2007, he could no longer be found. As the Board noted in its supplemental decision, Geronimo admitted using an invalid social security number when he worked for the Respondent, prior to 1991. However, the Board held that this fact, by itself, did not establish that he was not authorized to work in this country during the backpay period. See *Domsey Trading Corp.*, 351 supra, slip op., p. 7. Thus, it is necessary to locate him in order to determine whether he ever acquired a valid social security number that would authorize him to work in the United States.⁵ I

¹ The General Counsel has subsequently amended the motion on two occasions, most recently on May 30, 2008.

² General Counsel has advised that Ms. Ste. Juste correct name is Rose Marlene Ste. Juste.

³ A copy of General Counsel's Motion is attached to this decision as Appendix A.

⁴ A copy of the Respondent's letter is attached as Appendix B.

⁵ At the hearing in 1998, Geronimo testified that he obtained a different, perhaps valid, social security number in 1992. This is similar to the situation of other discriminatees who obtained valid social security numbers during or after the backpay period.

therefore reject the Respondent's contention that the record evidence is sufficient to determine that Geronimo was not authorized to work at any time during the backpay period.

Although the Respondent suggests that Geronimo has failed to participate in the proceedings after the remand, it is unknown whether this failure was deliberate. Because of the length of time it took the Board to issue its supplemental decision, it is possible he disappeared without ever knowing that the Board had issued its decision. It would be unjust to penalize him for the delay occasioned by the Board's deliberations in this case. Accordingly, I shall grant the General Counsel's motion and recommend to the Board that the back pay owed to Geronimo, as re-calculated to deduct any strike benefits he received, shall be placed in escrow along with the backpay of other missing discriminatees.

With respect to the other three discriminatees whose authorization status is in dispute, the General Counsel obtained evidence after the remand that each had obtained a valid social security number, authorizing him or her to work in the United States, either before or during the backpay period. On May 21, 2008, the General Counsel filed a motion, designated a joint motion although the Respondent had not signed it, proffering this evidence and requesting that factual findings be made based thereon.⁶ The Respondent, in its response to my Order to Show Cause why this motion should not be granted, submitted the June 11 letter referred to above, stating that it did not oppose this motion as to these three individuals (see Appendix B). Accordingly, I shall grant the motion and receive into evidence the attachments thereto showing the status of these three discriminatees.

Based on this new evidence, I make the following factual findings:

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Atulie Balan obtained a valid social security number, authorizing her to work in the United States, on September 20, 1990. Her backpay period would thus begin on that date and, as previously found, end with her reinstatement by the Respondent on April 2, 1991.

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Bardinal Brice received a valid social security number authorizing him to work in the United States on January 22, 1991. His backpay period commenced on that date.

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Marie Josee Francois received her social security number on January 12, 1984 and was thus legally entitled to work in this country throughout the backpay period.

In the absence of objection, I shall also accept the General Counsel's recalculation of the backpay amounts for Balan, Brice and Francois, reflecting the new evidence and deducting strike benefits each received.

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Louis Antoine Dormeville

The Board also remanded the backpay claim of Dormeville to the undersigned for the limited purpose of recalculating, if necessary, the amount of backpay he was owed after deducting workers' compensation benefits he received as a replacement for wages. Counsel for the General Counsel had excepted to my calculation and the Board was unable to determine whether my calculation was correct. As part of the "Joint Motion" General Counsel filed on May 21, counsel for the General Counsel has conceded that the amounts I deducted were correct.

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⁶ A copy of General Counsel's "Joint Motion" with attachments, is attached to this decision as Appendix C.

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Dormeville's backpay claim has been reduced however, by the amount of strike benefits he received.

Conclusion

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In sum, the backpay claims for Exavier and Ste. Juste are withdrawn, those for Balan, Brice and Francois are reduced to reflect their periods of ineligibility to work, if any, and the claim for Geronimo shall be treated like those of other missing discriminatees. Finally, Dormeville's backpay, as originally calculated, is correct, with the exception that strike benefits he received have now been deducted from gross backpay. The amounts now owed under the Board's initial order in this case, exclusive of interest, are as follows:

	Atulie Balan	\$5,500.95
	Bardinal Brice	\$4,401.00
15	Louis Antoine Dormeville	\$ 928.75
	Marie Josee Francois	\$5,457.10

The backpay claim for Rene Geronimo, which was \$9,047.20, shall be reduced by deducting any strike benefits he received, and the resulting amount placed in escrow in accordance with *Starlite Cutting I*, supra, as clarified in *Starlite Cutting II*, supra.

Dated, Washington, D.C. , July 1, 2008.

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Michael A. Marcionese
Administrative Law Judge

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